



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Renic Government Systems, Inc.--
Reconsideration

File: B-252643.2

Date: April 29, 1993

Richard J. Ike, Jr. for the protester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Request for reconsideration of dismissal of protest of
agency's refusal to extend date for receipt of proposals is
denied where protester has not shown that the basis for
dismissal--that the protest did not establish any likelihood
that agency acted improperly--was based on any error of fact
or law.

DECISION

Renic Government Systems, Inc. requests reconsideration of
our April 7 decision dismissing its protest of request for
proposals (RFP) No. DU205R93798, issued by the Department of
Housing & Urban Development for closing agent services.
Renic's protest challenged the agency's failure to grant an
extension of the RFP closing date; we dismissed the protest
because it failed to establish any likelihood that the
agency had acted improperly.

We deny the request.

Renic's protest presented the following facts: Renic
received a copy of the RFP on February 22, 1993; the RFP
established March 11 as the closing date for receipt of
proposals. On March 3, Renic mailed a list of 25 questions
about the RFP to the contracting officer. The contracting
officer received the questions on March 8, and responded to
all 25 questions via facsimile on March 9. Renic then
determined that it could not incorporate HUD's answers into
its proposal and have the revised proposal printed in the
time remaining, and requested an extension of the proposal
due date. HUD did not respond to Renic's request. Renic
then filed its protest with our Office on March 11.

On March 17, Renic received an amendment to the RFP extending the closing date to March 25. As this was the relief Renic had requested, Renic's protest became academic. However, Renic amended its protest on March 22, alleging that the extension to March 25 still did not provide it with sufficient time to prepare a proposal. In this connection, Renic explained that when it decided to protest the agency's failure to extend the closing date, "all activity with [its] subcontractor ceased." In fact, Renic had never even forwarded the list of questions and answers to the subcontractor. Renic asked that the agency be required to give it 10 days from the time it received the amendment to submit its proposal.

In our decision dismissing the protest, we pointed out that our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1993), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Professional Med. Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. We found that Renic's protest did not make any showing that the agency may have acted improperly. Instead, the protest indicated that Renic's alleged inability to prepare a proposal by the amended March 25 closing date was due to its own failure to act in a timely manner. In this regard, although Renic did not receive the RFP until February 22, less than 3 weeks before the closing date, it did not forward its questions about the RFP to the agency until March 3, 9 days later. Further, although Renic could have transmitted the questions to the agency via facsimile, it sent them by regular mail, so that the agency did not receive them until March 8. Upon receiving the answers to its questions on March 9, Renic did not forward them to its subcontractor. Instead, Renic waited for the agency to extend the closing date past March 11. When the agency did not do so, Renic filed its protest in our Office without ever having furnished the answers to the subcontractor.

Based on these facts, as related by Renic, we concluded that Renic would have had 10 days before the original March 11 closing date to prepare its proposal if it had promptly forwarded its questions to the agency when it received the RFP. Renic's failure to promptly pursue this information notwithstanding, if Renic had promptly forwarded the answers to its subcontractor when it received them on March 9, it would have been prepared to submit a proposal when it learned of the agency's decision to extend the closing date to March 25. We therefore had no basis to conclude that the agency's refusal to extend the closing date was improper.

See National Med. Staffing, Inc., B-244096, May 22, 1991, 91-1 CPD ¶ 503 (protester's lack of time to prepare proposal was due to its own failure to request RFP in a timely manner rather than any improper agency action).

In its reconsideration request, Renic alleges that our conclusion--that it was Renic's fault, not the agency's, that the firm did not have time to prepare its proposal--was based on two erroneous assumptions: (1) that it "sat on its questions" from February 22 to March 3, and (2) that it abandoned communications with its subcontractor upon filing its protest. Renic now explains that it spent most of the time between February 22 and March 3 attempting to locate a subcontractor. Renic asserts further that the agency misled it into withholding the answers from the subcontractor by telling Renic that there would be no extension. Renic maintains that the agency thus led it to believe that it could not possibly submit a proposal, and that further pursuit of the matter with its subcontractor therefore would be useless.

Under our Regulations, to obtain reconsideration the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a); R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Information not previously considered refers to information that we overlooked or information that the protester did not have access to when the initial protest was filed. S.A.F.E. Export Corp.--Recon., B-215022.4, Sept. 17, 1984, 84-2 CPD ¶ 298.

Renic's request does not provide a basis for reconsideration of our decision. First, as to Renic's 9-day delay in forwarding its questions about the RFP to the agency, Renic's protest provided no explanation for the delay. We will not reconsider our decision based on the explanation Renic now advances for the first time; this information could and should have been presented in the protest, and our Regulations do not contemplate piecemeal presentation of such information. See Calvin Brow--Recon., B-238226.2, Apr. 25, 1990, 90-1 CPD ¶ 422.

In any case, Renic's explanation is unpersuasive. In this regard, it is not apparent why Renic did not begin contacting these firms as early as January 26, the date Renic first requested a copy of the RFP from the agency, instead of waiting until it received the solicitation on February 22. Similarly, even if, as Renic claims, it spent the period from February 22 until March 3 searching for a subcontractor, it is not clear how Renic reconciles this relatively lengthy search with its need for 10 days to prepare its

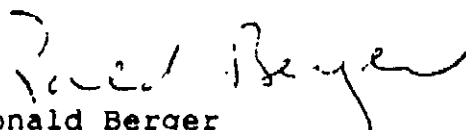
proposal; when Renic completed its subcontractor search on March 3, it already had fewer than the 10 days it claims it needed. We thus again conclude that Renic did not proceed sufficiently promptly after receiving the RFP.

Moreover, even if we agreed that Renic reasonably delayed forwarding its questions to the agency, our conclusion to the contrary was not the only basis for our holding that the agency did not act improperly here. We also concluded that Renic was responsible for its inability to prepare a proposal by the amended closing date because it had failed to provide its subcontractor with the answers to the questions. While Renic now asserts that it had no reason to forward the answers to the subcontractor since the agency did not grant its request for an extension of the closing date, we think Renic's decision to discontinue work on its proposal was a matter of the firm's own business judgment and not the result of any inducement by the agency. In this regard, Renic's protest to our Office asked for an extension of the closing date; Renic therefore should have been prepared for the possibility that the agency would take corrective action in response to the protest and grant an extension--which, in fact, it did. As our decision concluded, had Renic forwarded the answers to the subcontractor when it first received them, it would have been in a position once it received notice of the extension on March 17 to prepare a proposal by March 25. HUD was not required to further extend the closing date to accommodate Renic simply because the firm had decided to direct its resources away from proposal preparation. See Lanier Worldwide, Inc., B-249338, Nov. 12, 1992, 92-2 CPD ¶ 343; see also Trilectron Indus., Inc., B-248475, Aug. 27, 1992, 92-2 CPD ¶ 130.

Finally, while not discussed in our decision, we note that Renic did not explain in its protest, and still has not explained, why it needed 10 days to submit a proposal after learning of the extension instead of the 8 days it actually had. Renic's protest asked that we "make the determination that the proposal due date be extended at least 10 days from the time the potential offeror receives the amendment." Renic thus appears to be advocating a per se requirement that offerors have at least 10 days to respond to any solicitation amendment. The Federal Acquisition Regulation (FAR) imposes no such requirement on agencies; rather, it vests contracting officers with the discretion to determine whether and to what extent closing date extensions are necessary. See FAR § 15.410. We will not disturb a contracting officer's decision in this regard unless it is shown to be unreasonable or the result of a deliberate attempt to exclude the protester from the competition. See Lanier Worldwide, Inc., supra; Trilectron Indus., Inc., supra. As discussed, Renic has not given any reason why the contracting officer's extension of the closing date to

March 25, which afforded the firm 8 days to respond, was unreasonable. Further, since the extension ultimately was granted in response to Renic's protest, we cannot conclude that it was related to any deliberate attempt to prevent Renic from submitting a proposal.

We conclude that Renic has not established that our decision--that Renic failed to establish any likelihood that the agency acted improperly in not extending the RFP closing date beyond March 25--was based on any error of fact or law. Accordingly, the request for reconsideration is denied. See R.E. Scherrer, Inc.--Recon., supra.


Ronald Berger
Associate General Counsel